



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an order of possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”) issued on February 26, 2023, for a monetary order for unpaid rent and to recover the cost of the filing fee.

Both parties appeared gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form and make submissions at the hearing.

Issues to be Decided

Is the landlord entitled to an order of possession for unpaid rent?
Is the landlord entitled to a monetary order?

Background and Evidence

The tenancy began on June 15, 2020. Rent in the amount of \$2,000.00 was payable on the 20th of each month. A security deposit of \$2,000.00 was paid by the tenant.

The landlord testified that the tenant failed to pay rent for February 2023 in the amount of \$2,000.00 and was served with the Notice in person on February 26, 2023. Filed in evidence is a copy of the Notice, which complies with section 52 of the Act.

The landlord testified the outstanding rent was not paid and the tenant has failed to pay subsequent rent for March and April 2023. The landlord seeks an order of possession and a monetary order for unpaid rent.

The tenant testified that they did receive the Notice. The tenant stated that they did not pay rent for February, March and April 2023, because the landlord wanted to increase their rent to \$2,500.00, which is illegal. The tenant stated that they have made improvements to the property such as painting, replacing flooring, a cabinet and a toilet. The tenant stated that the landlord said they could make changes to the property when they moved into the rental unit. The tenant stated that they paid a security deposit that was greater than the Act allowed.

Analysis

Based on the above, the testimony, and evidence, and on a balance of probabilities, I find as follows:

Based on the testimony of the landlord and the tenant, I find that the tenant was served with the Notice on February 26, 2023, in person. The Notice informed the tenant that the notice would be cancelled if the rent was paid within five days. The notice also explains the tenant had five days to dispute the notice.

The tenant did not dispute the Notice and did not pay the outstanding rent and is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice. I find the tenancy legally ended on March 9, 2023, the date within the Notice.

I find that the landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective **two days** after service on the tenant. This order may be filed in the Supreme Court and enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

Section 26 of the Act states **a tenant must pay their rent when due, whether or not the landlord complies with the Act**, unless the tenant has the authority under the Act to do so.

I accept the landlord breached the Act, when they accepted a security deposit of \$2,000.00 as the landlord must not require or accept a security deposit greater than the equivalent of $\frac{1}{2}$ of one month's rent payable under the tenancy agreement, pursuant to section 19(1) of the Act. If a landlord accepts a security deposit that is greater than the amount permitted under the Act, the tenant is entitled to deduct the overpayment from the rent to recover the overpayment. I find the tenant was entitled to deduct the

\$1,000.00 overpayment from the rent; however, the tenant was required to pay the balance due of \$1,000.00, which the tenant still did not do.

Even, if I accept the tenant's testimony that the landlord was attempting to increase the rent to \$2,500.00, which would be a breach of the Act by the landlord; however, the tenant was required to pay the agreed upon rent of \$2,000.00, not withhold the rent.

Further, I find making improvements to the property is not grounds to withhold the rent, this was a personal choice of the tenant to do. This does not constitute emergency repairs as defined in the Act.

I find the tenant breached section 26 of the Act, when they withheld rent for three months. A tenant cannot withhold rent simply because they feel entitled to do so.

I find that the landlord is entitled to a monetary order, pursuant to section 55 and 67 of the Act for unpaid rent for February, March and April 2023 in the amount of **\$6,000.00**.

I find that the landlord has established a total monetary claim of **\$6,100.00** comprised of unpaid rent, and the \$100.00 fee paid by the landlord for this application.

I order that the landlord retain the security deposit of \$2,000.00 in partial satisfaction of the claim and I grant the landlord an order pursuant to section 67 of the Act, for the balance due of **\$4,100.00**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

Conclusion

The tenant failed to pay rent and did not file to dispute the notice to end tenancy. The tenant is presumed under the law to have accepted that the tenancy ended on the effective date of the notice to end tenancy.

The landlord is granted an order of possession and may keep the security deposit in partial satisfaction of the claim. I grant a monetary order for the balance due.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: May 01, 2023

Residential Tenancy Branch